

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
INDIAN HEALTH SERVICE**

Refer to: DPM

ALBUQUERQUE AREA INDIAN HEALTH SERVICE CIRCULAR NO. 2000-03

**ALTERNATE DISPUTE RESOLUTION (ADR) IN THE WORKPLACE:
PATHWAYS TO CONFLICT MANAGEMENT AND RESOLUTION**

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1. **PURPOSE.** The purpose of this circular is to establish policies and procedures for the program entitled Alternate Dispute Resolution (ADR) in the Workplace: Pathways to Conflict Management and Resolution for the Albuquerque Area Indian Health Service (AAIHS). This program will be located in the Division of Personnel Management and overseen by the Labor Relations Specialist/Officer. This circular will not change existing administrative and negotiated grievance protocols, with the exception of the Equal Employment Opportunity (EEO) complaint process to make ADR available.
2. **OBJECTIVES.** The objective of the AAIHS ADR Program is to provide Civil Service Employees, Public Health Service Commissioned Corp Personnel, Labor Organizations, and Management of the AAIHS with a confidential and neutral resource to informally resolve work place disputes. This program has four goals.
 1. To educate employees about ADR and disseminate information on ADR services and points of contact in the AAIHS.
 2. To maintain and coordinate a list of neutrals, e.g., internal and external mediators and facilitators.
 3. To maintain confidential statistical information on work place disputes to assist AAIHS in conflict management.
 4. To strengthen the Albuquerque Area's ADR Program by developing a working relationship with the union and employees.

3. **AUTHORITY.** The authorities for ADR include: Public Law 101-552, the Administrative Dispute Resolution Act of 1990, Executive Order 12871, Labor-Management Partnerships, October 1, 1993, Public Law 101-648, the Negotiated Rule-Making Act of 1990, EEO-MD-110, and other prevailing regulations and guidelines requiring parties to consider ADR prior to proceeding to the adversarial adjudication phase of disputes.
4. **POLICY.** This policy applies to Civil Service Employees, Labor Organizations, and Management of the AAIHS. This policy is available for use by Commissioned Corps Personnel in accordance with CCPM 26.1, Instruction 6, Equal Opportunity: Discrimination Complaints Processing. This policy is also available for use by independent contractors after exhausting all contract remedies.

It shall be the policy of the AAIHS to establish the ADR Program and adhere to the guidelines set forth. The ADR Program will help resolve disputes in a timely, cost effective, and productive manner. This program will encourage ADR to be implemented down to the lowest level, therefore improving morale among employees.

5. **DEFINITIONS.**

- A. **Administrative Grievance Procedure.** (The Administrative Grievance System is set forth in Part 7, Chapter 5 of the Indian Health Manual, June 24, 1997). This policy applies to "all Civil Service employees of the IHS including members of a bargaining unit whose negotiated grievance procedures does not apply to the matter being grieved." A two-tiered informal and formal process is available. Mediation is encouraged.
- B. **Alternate Dispute Resolution (ADR).** A continuum of methods all of which involve some form of consensus resolution by disputing parties, methods of conflict management used in lieu of traditional dispute resolution procedures. These methods include, but are not limited to, facilitation, mediation, mini-trial, interest-based problem solving, negotiated rule-making, arbitration, open door policies, ombudsman, peer review, conciliation, internal mediation, and fact-finding.
- C. **Consensus-based Decision-Making.** ADR methods to bring in stakeholders as early as possible prior to submission of conflict through traditional dispute resolution forums and in pre-decisional stages to work on consensus building and cooperative problem-solving.
- D. **Equal Employment Opportunity Complaint Procedure:** Procedure set forth in Oklahoma City Area Indian Health Service Circular No. 94-03 (Exhibit I). Oklahoma City Area Office is a regional Equal Employment Opportunity Office, which includes AAIHS. This policy applies to all employees in the AAIHS. A two-tiered informal and formal process is available to employees. Informal counseling and mediation are available and encouraged.

- E. **Employees.** All personnel in the AAIHS, including Civil Service Employees (bargaining and non-bargaining unit employees) and PHS Commissioned Corps Personnel in the Albuquerque Area Office and Service Units.
- F. **Facilitation.** A voluntary process through which parties meet with a neutral facilitator, who assists them in consensus building and cooperative problem-solving. The session may have varying emphasis, including reaching decisions, and/or improving communication, using interest-based bargaining techniques.
- G. **Interest-Based Negotiation Technique.** A multi-phase dispute resolution technique in which parties maintain control over the outcome of the conflict, focusing on problem-solving. (Exhibit II)
- H. **EEO Informal Counseling Process.** Dispute resolution process available under the Equal Employment Opportunity Complaint Procedure where EEO Counselor engages in fact-finding.
- I. **Labor Organizations.** All present and future labor organizations in the AAIHS who have been duly elected to exclusively represent employees, and who have entered into a collective bargaining agreement with the AAIHS, including the Albuquerque Area Office and Service Units. *See* 5 U.S.C. §§ 7301, 7311.
- J. **Management.** All personnel in the AAIHS who are identified as supervisors, management officials, confidential employees, and any other employees identified in 5 U.S.C. §7112 who are exempt from participation in bargaining units, including PHS Commission Corps personnel in the Albuquerque Area Office and Service Units.
- K. **Mediation.** A voluntary process in which the parties discuss their disputes with a neutral mediator, who assists them in reaching a mutually satisfactory settlement. A mediator may suggest ways of resolving the dispute but may not impose a settlement on the parties. Mediators may come from within the agency or outside. Those who come from outside the agency are called Third Party Neutrals, while their counterparts within the agency are called internal neutrals. Mediators are trained in the skills and techniques of the discipline known as mediation.
- L. **Negotiated Grievance Procedure.** A method of dispute resolution negotiated between an agency and a duly elected union organization recognized as the exclusive representative of bargaining unit employees. This method can include formal steps and components of ADR, such as mediation and arbitration. This procedure applies to bargaining unit employees. Informal settlement is encouraged.
- N. **Neutrals.** Persons who serve as mediators and facilitators. A neutral may suggest ways of resolving the dispute but may not impose a settlement on the parties. Neutrals may come from within the agency or outside. Those who come from outside the agency are called Third Party Neutrals, while their counterparts within the agency are called internal neutrals. Neutrals are trained in the skills and techniques of the

discipline known as mediation and any applicable agency rules, regulations, and Standards of Ethical Conduct. (Exhibit III)

- O. **Partnership Committees.** An informal or formal forum and/or process where participants work as a team of equals to prevent and manage conflict in the work place. Participants establish ground rules and propose recommendations and solutions to decision-makers.
- P. **Lists of Neutrals.** Panels of neutrals will be assembled from management and labor nominees. Mediators and Facilitators will receive training in the skills and techniques for mediation and facilitation, unless previously trained or certified.

6. **RESPONSIBILITIES**

A. **Area Director**

Responsible for approving settlement agreements that include monetary compensation. In EEO Cases, the Area Director approves compensatory damages up to \$10,000 and back pay.

Responsible for approving settlement agreements that change personnel policies, practices and procedures.

Responsible for granting certain types of extraordinary relief, including, but not limited to, directed reassignments, identical group grievances.

B. **Area Personnel Officer**

Responsible for reviewing settlement agreements that include monetary compensation.

Responsible for reviewing and approving settlement agreements that may affect personnel actions.

Responsible for reviewing and approving settlement agreements that impact labor bargaining obligations.

Responsible for serving as a designated point of contact.

C. **ADR Program Manager**

Responsible for administering ADR Program, including education, training, reporting requirements, and maintaining list of neutrals.

Responsible for serving as neutral.

Responsible for serving as a designated point of contact.

D. Designated Point of Contact

Responsible for informing parties of their rights as participants in ADR, ADR services, and making referrals to neutrals, including coordinating with neutrals.

May serve as a neutral.

E. Employees

Responsible for supporting the ADR program by cooperating in good faith, as participant in ADR, requesting release time in advance, ensuring compliance with terms of settlement agreement.

May serve as designated point of contact.

May serve as a neutral.

F. Equal Employment Opportunity Program

1. Regional Director

Responsible for reviewing and approving all EEO settlement agreements, e.g., EEO settlement agreements up to \$10,000.

Responsible for reviewing and approving EEO complainant requests for ADR.

2. EEO Counselors

Responsible for serving as a designated point of contact.

May serve as a neutral.

G. Labor Organization (e.g., President and Stewards)

Responsible for supporting the ADR program by cooperating in good faith, as participant in ADR, requesting release time in advance, ensuring compliance with terms of settlement agreement.

May serve as designated point of contact.

May nominate bargaining unit employees to serve on list of neutrals.

H. Managers and Supervisors

Responsible for supporting ADR program by cooperating in good faith, as participants in ADR, approving release time for participants, ensuring compliance with terms of settlement agreement within their supervisory authority.

May serve as designated point of contact.

May serve as a neutral.

I. Neutrals

Responsible for attending training in dispute resolution techniques.

May be trained in EEO laws, policies and regulations.

May be trained in Federal Personnel laws, policies and regulations, including, Civil Service Reform Act, Local Collective Bargaining Agreements, Adverse Actions and Standards of Ethical Conduct, etc.

7. **PROCEDURES.**

Mediation, facilitated negotiations, and other informal processes will be formally made available to Civil Service Employees, PHS Commissioned Corps Personnel, Labor Organizations and Management of the AAIHS. The semi-formality of mediation and facilitation will not modify existing administrative or negotiated grievance procedures, except that the current EEOC complaint process will be modified to permit inclusion of the following procedures.

A. **ADR and EEOC Administrative Procedures**

Under EEOC procedures, after an employee contacts an EEO Counselor following an incident alleged under Title VII of the Civil Rights Act, the employee has forty-five (45) days to schedule an informal counseling session. Upon scheduling a counseling session, a counselor has thirty (30) days to complete informal dispute resolution. If the dispute remains unresolved during informal counseling, the counselor will issue a final counseling report, and the employee may pursue formal remedies under EEO procedures or grieve through the negotiated or administrative grievance process, but not both.

If an employee voluntarily requests to participate in ADR services provided, the following ADR procedure will apply. However, if an employee voluntarily withdraws from ADR at any step, the Counselor will issue a final counseling report to permit the employee to pursue formal remedies under EEO procedures or grieve through the negotiated or administrative grievance process.

1. Upon written approval, the informal counseling session may be extended to sixty (60) calendar days, to convene and conclude ADR, but not to exceed ninety (90) days.
2. The EEO Counselor will forward to the Regional EEO Manager, the employee's written request, including type of ADR requested.
3. The EEO Counselor will perform a preliminary assessment on whether ADR is appropriate for all claims alleged, including determination of the issues, determination of the basis, and conduct a limited inquiry. *See, e.g.,* EEO Management Directive 110, Ch. 2, §III (Oct. 1992). An EEO Counselor will forward this preliminary assessment to the Regional EEO Manager for review and approval.
4. Following approval by the Regional EEO Manager, the EEO Counselor will coordinate with appropriate parties to convene an ADR session provided herein.
5. If settlement is reached during an ADR session, the EEO Counselor will forward the settlement agreement to the Regional EEO Manager for review to ensure compliance with applicable laws, rules, regulations, and policies. The EEO Counselor will forward the settlement agreement within two (2) days following completion of the ADR session. If the Regional EEO Manager and appropriate management officials approve the settlement, the agreement must be signed by appropriate parties within seven (7) days following completion of the ADR session.
6. The settlement agreement will be implemented only after completion of the preceding settlement process. The EEO Counselor will be responsible for notifying all concerned persons to implement the agreement, which will be completed within fifteen (15) days following conclusion of the preceding settlement process.

B. ADR and Negotiated and Administrative Grievance Procedures

Access or use of the Negotiated and Administrative Grievance Procedures will not be modified by this policy. The services and procedures are provided to all employees, Labor Organizations, and Management as a method of confidential, voluntary and informal dispute resolution. If parties voluntarily request to participate in ADR services provided, the following terms in addition to the procedures will apply.

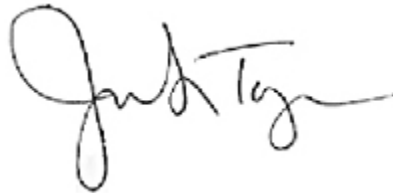
1. By mutual consent, parties will agree to suspend deadlines under grievance procedures to permit participation in ADR services provided.
2. Rights to pursue formal remedies are reserved to the parties.
3. The ADR procedures set forth herein are available to parties at any step in their grievance.

4. When parties voluntarily elect to use ADR services provided here, they agree to adhere to the ADR procedures, in a good faith effort to resolve their disputes.

C. ADR Procedures

- Step 1:** Interested parties contact Designated Point of Contact.
- Step 2:** Interested parties complete Agreement to Participate in ADR. (Exhibit IV)
- Step 3:** Interested parties select a neutral from the list maintained by ADR Program Manager.
- Step 4:** Neutral will coordinate and conduct ADR Session.
- Step 5:** If settlement agreement is reached, appropriate parties will implement.
- Step 6:** Parties may submit an ADR Evaluation. (Exhibit V)

8. **EFFECTIVE DATE.** This circular is effective upon date of signature and shall remain in effect until cancelled or superseded.



7/17/00

James L. Toya
Director, Albuquerque Area Indian Health Service

AGREEMENT TO PARTICIPATE IN ALTERNATE DISPUTE RESOLUTION

I. INITIATING THE ADR PROCESS

ADR is a voluntary process. By agreeing to participate, parties agree to negotiate to attempt to work toward a mutually satisfactory solution. The mediator does not have power or authority to render a binding decision or to impose a settlement agreement.

To begin the process, interested parties should contact a designated point of contact. The designated point of contact will provide parties with information about the process, their rights under the process, and coordinates selection of a mediator.

II. COMMITMENT BY PARTICIPANTS

By mutual consent, parties will agree to suspend deadlines under grievance procedures to permit participation in ADR services.

Parties have chosen to participate in ADR in a spirit of cooperation. Parties agree to use their best efforts to work together fairly and in good faith. Parties will strive to communicate without assessing blame or fault. Parties agree to use their best efforts to maintain an atmosphere of respect and refrain from inappropriate behavior and/or communications, including, but not limited to, profanity or foul language. Parties agree that ADR is based on honesty and openness, and that each party agrees to disclose to the other party specific information regarding the issues discussed. Parties understand that their conduct is governed by the U.S. Department of Health and Human Services Standards of Conduct and other applicable policies and procedures.

III. RELEASE TIME FOR EMPLOYEE PARTICIPATION IN ADR

Time spent in mediation will be considered part of any employee's normal working hours. Supervisors will make reasonable efforts to make employees available to participate in ADR.

IV. RIGHTS OF PARTIES

A. **RIGHT TO REPRESENTATION** - Parties have the right to representation and to have their representative present during ADR session at their own expense. The mediator shall not render legal advice and/or act as a legal representative of either party.

B. **RIGHT TO FILE FORMAL GRIEVANCE OR COMPLAINT** - Parties will retain the right to file a formal grievance or complaint if ADR is unsuccessful.

C. **RIGHT TO SELECT A NEUTRAL** - Parties may select a mediator from a list of available mediators provided by the agency. Mediators will be neutral, impartial, and trained in mediation techniques.

V. SELECTING A NEUTRAL

Following execution of an agreement to mediate, parties may select a mediator from a list of mediators provided by the agency. Neutrals will be neutral, impartial, and trained in mediation techniques. Prospective neutrals will disclose any circumstances likely to create a presumption of bias or interest in the outcome of the proceedings or prevent a prompt meeting with the parties, including any limitation concerning the nature of cases for which the person would be willing to provide ADR services and familial and kinship relations within the agency you plan to provide ADR services.

The neutral shall not render legal advice and/or act as a legal representative of either party. The neutral will not be liable to any party for any act or omission in connection with mediation or application of the procedures herein. Parties further agree that ADR is a voluntary process and the neutral cannot guarantee the success of any settlement agreement.

VI. PRELIMINARY ARRANGEMENTS

Upon appointment, the neutral will work with the parties to establish the time and location of a session. Additional ADR sessions may be scheduled as agreed upon by the parties and the mediator.

VII. ADR SESSION

The neutral will control of procedural aspects of the session with the input and negotiation of proposals from the parties. The neutral will decide when to hold separate meetings (or caucus) and joint meetings with the parties. Separate private meetings are held to improve the mediator's understanding of the respective positions of each party. The neutral may request additional information from the parties.

VIII. CONFIDENTIALITY

The entire ADR process is confidential, except for the fact that the process has taken place, including information disclosed in a private caucus unless a party agrees that it may be disclosed. ADR proceedings are settlement negotiations and that all offers, promises, conduct, and statements, whether written or oral, made in the course of the proceedings are inadmissible in any litigation or arbitration of their dispute, to the extent permitted by law. Except that settlement terms may be disclosed in an action to enforce compliance. Information from the session, including work product and notes, shall not be subpoenaed, nor the neutral subpoenaed to testify. No recording or stenographic record shall be made of the session.

IX. DISCOVERY

Parties shall attempt to agree on a plan for necessary discovery, based on a substantial need in order to prepare for the session. If an agreement is not concluded, the parties may present a plan before the neutral for a non-binding recommendation.

X. SETTLEMENT AGREEMENTS

If a settlement is reached, the neutral or one of the parties will draft a written settlement document incorporating all settlement terms. This draft will be circulated expeditiously among the parties and mediator, amended as necessary, and formally executed in a timely manner.

Parties agree that settlement agreements will be reviewed by technical advisors for legal and regulatory compliance, and approved by appropriate authorities for the agency before implementation.

XI. TERMINATION

The ADR session may be terminated in any one of the following circumstances: by execution of a settlement agreement by the parties; or by declaration of the neutral that, in their judgment, further efforts would not be constructive; or by declaration of one of the parties that they want to terminate the process.

XII. ACKNOWLEDGEMENT

I have read, understood, and agreed of my own free will and without coercion to each of the provisions of this agreement to participate in ADR.

SIGNATURE AND DATE

ETHICAL STANDARDS FOR NEUTRALS

Policy and Coverage

Adherence to these ethical standards by neutrals is basic to professional responsibility and the integrity of Albuquerque Area Indian Health Service's Alternate Dispute Resolution (ADR) initiative. It is the policy of the Albuquerque Area Indian Health Service that these standards are intended to perform three major functions: to serve as a guide for the conduct of neutrals; to inform the participants; and to promote confidence in ADR as a process for resolving disputes. The conduct of internal neutrals is also governed by the Department of Health and Human Services Standards of Conduct and other applicable policies and procedures.

AAIHS Neutrals commit themselves to be guided in their professional conduct by these standards. The Albuquerque Area Division of Personnel Management is available to advise internal neutrals about interpretation of these standards.

A. General Responsibilities

Neutrals have a duty to the parties, to the profession, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and not seek to advance their own interests at the expense of the parties.

Neutrals must act fairly in dealing with the parties, have no personal interest in the terms of the settlement, show no bias toward individuals involved in the dispute, be reasonably available as requested by the parties, and be certain that the parties are informed of the process in which they are involved.

Neutrals are prohibited from advertising and solicitation. No commissions, rebates, or other similar forms of remuneration should be given or received by a neutral for services provided.

Neutrals have a duty to improve the practice of mediation by continuing to improve and enhance their knowledge, skills and abilities.

B. Responsibilities to the parties

1. Canon I: Autonomy. Neutrals will recognize that mediation and facilitation are based on the principle of autonomy of the parties. This requires that the mediation process rely on the ability of the parties to reach a voluntary, un-coerced agreement, and that any party may withdraw from the process at any time.
2. Canon II: Impartiality. Neutrals will conduct sessions in an impartial manner. No claims of specific results or promises, which imply favor of one side over another, should be made.
3. Canon III: Informed Consent. Neutrals have an obligation to assure that all parties understand the nature of the process, the procedures, the particular role of the neutral, and the parties' relationship to them.
4. Canon IV: Confidentiality. Neutrals will maintain the reasonable expectations of the parties with regard to confidentiality.

5. Canon V: Conflict of interest. Neutrals must refrain from entering or continuing in any dispute if they believe that their participation would be a clear conflict of interest. The neutrals also must disclose any circumstance that may create or give the appearance of a conflict of interest and any circumstance that may reasonably raise a question as to the neutral's impartiality. The duty to disclose is a continuing obligation throughout the process.
6. Canon VI: Quality of the process. Neutrals will conduct the sessions fairly, diligently, and in a manner consistent with the principle of autonomy by the parties. Neutrals will exert every reasonable effort to expedite the process.
7. Canon VII: Competence. Neutrals will convene sessions when they have the necessary qualifications to satisfy the reasonable expectations of the parties.
8. Canon VIII: Settlement. Neutrals do not have power or authority to render a binding decision or to impose a settlement agreement. They may promote settlement using the interest-based bargaining techniques.
9. Canon IX: Coordination. In the event that more than one neutral is involved in the resolution of a dispute, each has an obligation to inform the others regarding his or her entry in the case. Neutrals working with the same parties should maintain an open and professional relationship with each other.
10. Canon X: Withdrawal. Neutrals may withdraw at any time by written notice to the parties for overriding personal reasons, including conflict of interest, if they believe that either party is not acting in good faith, or if they conclude that further mediation efforts would not be useful.

INTEREST-BASED BARGAINING PROCESS

Interest-based bargaining is a multi-phase dispute resolution technique in which parties maintain control over the outcome of the conflict, focusing on problem-solving. There are three (3) phases and ten (10) steps: Pre-negotiation (steps 1-3), Negotiation (steps 4-8), and Implementation (steps 9-10).

1. Discuss and agree on ground rules, responsibilities, and application.
2. Define the conflict and/or problem.
3. Identify interests, needs and desires of each party.
4. Examine relevant data and perspectives.
5. Identify overlapping interests and areas of consensus.
6. Generate options to meet consensual interests and separate interests.
7. Create standards and criteria to evaluate options.
8. Combine all mutually beneficial options by consensus.
9. Reduce proposed solution to writing, including provisions for monitoring, follow-up, dispute resolution, and if applicable, re-negotiation dates.
10. Execute the provisions of the agreement.

ADR EVALUATION FORM

1. Please identify the process in which you participated. _____.
2. Was this the first time you were in an ADR process to resolve a dispute, complaint, grievance, or conflict? Yes No (If yes, move on to question 3)
3. How did the mediation process utilized this time compare to the dispute resolution process or forum with which you've previously been involved?

	Disagree			Agree	
a) This process was faster.	1	2	3	4	5
b) I was more satisfied with the results.	1	2	3	4	5
c) I communicated better with the other party(ies).	1	2	3	4	5
d) I would recommend this process to others.	1	2	3	4	5
4. With respect to the session recently completed:					
a) Most of my issues/concerns were resolved.	1	2	3	4	5
b) I understand the real issues better.	1	2	3	4	5
c) The other party (ies) understands my perspective better as a result of the mediation.	1	2	3	4	5
d) I understand the other party (ies) perspective better as a result of the mediation.	1	2	3	4	5
e) I feel the work environment (if applicable) has improved as a result of the session.	1	2	3	4	5
f) I am satisfied with the results of the session.	1	2	3	4	5
g) The mediators/facilitators were fair and impartial.	1	2	3	4	5
h) The mediators/facilitators helped everyone listen, communicate, and stay focused.	1	2	3	4	5
i) The mediators/facilitators helped identify common and compatible interests of the parties.	1	2	3	4	5
j) The mediators/facilitators helped keep discussions objective and rational.	1	2	3	4	5

	Disagree			Agree	
k) The Indian Health Service should continue to make ADR available.	1	2	3	4	5
l) Whether the issues were resolved or not, this session was worth the time and effort.	1	2	3	4	5
m) I recommend these services to others in situations similar to the one addressed in this session.	1	2	3	4	5
n) I recommend ADR in appropriate workplace disputes, grievances, complaints, or conflicts.	1	2	3	4	5
5. What recommendations, if any, do you have for preventing nonproductive conflict and/or improving conflict resolution in your organization?					
6. How much money or time, if any, would you estimate the government will save as a result of this mediation?					
7. In what ways, if any, is the work environment likely to improve as a result of this mediation?					
8. What do you see as the advantages and disadvantages of the ADR process in which you participated?					
9. How could this session have been conducted (or structured) in a way that would have been more helpful in resolving the issues?					